LAWFOYER INTERNATIONAL JOURNAL OF DOCTRINAL LEGAL RESEARCH

(ISSN: 2583-7753)

Volume 1 | Issue 2

2023

© 2023 LawFoyer International Journal of Doctrinal Legal Research

Follow this and additional research works at: www.lijdlr.com
Under the Platform of LawFoyer – www.lawfoyer.in

After careful consideration, the editorial board of LawFoyer International Journal of Doctrinal LegalResearch has decided to publish this submission as part of the publication.

In case of **any suggestions or complaints**, kindly contact info.lijdlr@gmail.com

To submit your Manuscript for Publication in the **LawFoyer International Journal of DoctrinalLegal Research,** To submit your Manuscript Click here

IMPACT OF ADMINISTRATIVE MALPRACTICES ON THE BUREAUCRATIC MORALITY OF INDIA: A STUDY

Devika Reshma[1]

I. ABSTRACT

After attaining Independence from the Britishers in 1947, India was successful in inheriting the best administrative structure compared to all the emerging countries with its morally upstanding and committed public service. However, with time, this moral structure was soon corrupted with commissions of administrative malpractices that changed the administrative bodies' very foundation.

Observing morality as a concept in governance has been a concern for Indians since immemorial. Most often, the moral aspect is tainted with the nature of political, judicial, and administrative corruption in India that has regressively affected the performance standard within the bureaucratic system. India has also witnessed extensive misuse of legal and constitutional machinery by highly placed ministers of the government and other authorities who began to rock the moral structure of the nation since the very first decade of Independence.

One question that is often asked is how such administrative malpractices affect the bureaucratic morality of the country, which will be dealt with in this research article. The article will also focus on a comparative analysis of the impact of administrative malpractices on the bureaucracy in India and other developed nations. Finally, this article shall conclude by finding out what steps must be taken to keep such administrative bodies under control to ensure the morally upstanding structure created by the country stands strong.

II. KEYWORDS

Morality, Malpractices, Corruption, Misuse, Legal Guarantees, and Regulations.

III. INTRODUCTION

[1] Student at Symbiosis Law School, Hyderabad.

"Power corrupts, and absolute power corrupts absolutely." **~ John Dalberg-Acton**

These were the words of the nineteenth-century English historian Lord Acton who had observed and described the practice of abuse of power by the clergymen in England, especially the popes. Even though these remarks were made in the nineteenth century, their relevance is still undisputed today, wherein *greed and power take precedence over morality*. This culture of bureaucracy dates back to about 300 BC when "40 types of revenue embezzlement of state funds committed by his very own employees were exposed by Kautilya, the then Prime Minister of Emperor Chandragupta Maurya". His judgement and description still appear to be valid in modern India:

> "Just as it is impossible not to taste the honey or the poison that finds itself at the tip of the tongue, so it is impossible for a government servant not to eat up, at least, a bit of the King's revenue."[2]

Bureaucratic morality comprises two terms: 'Bureaucrat', an official appointed under a government department through a merit system, and 'Morality' includes both good and bad characteristics of holding an office of power. After Independence, the citizens of India anticipated the country's government to be in the hands of persons recognized for their outstanding character and skill, aiming to achieve higher standards of integrity and morality in both areas of politics and administration[3]. Despite inheriting one of the most well-structured administrative machinery amongst the leading countries in the world, India lacks bureaucratic morality, as *administrative malpractices and corruption is observed to be institutionalized in the very roots of democracy*.

This behaviour is observed to be closely linked with the *political environment* of the country. It is said to be a direct consequence of the lack of transparency and accountability in governance rules, complicated procedures, and the bureaucracy's

[2] Kautilya, *Arthasastra*, Book II, Ch. IX:70.
[3] India, Report of the Committee on Prevention of Corruption, Santhanam Committee, 1964.

enjoyment of broad discretionary powers[4]. Political corruption and scandals involving not just politicians but also high-ranking officials in the Indian bureaucracy have hit the headlines for quite a long time which has, in many ways, undermined the legitimacy of the democratic process and the trust of the citizens in such public institutions.

Such administrative malpractices must be controlled, for which certain institutions like the Supreme Court or the Election Commission have taken a firmer stand against corruption and other malpractices in recent years, including critical legislation like the Right to Information Act in 2005. To establish an impartial grievance system to address abuse of administrative powers and activities of the government and other public institutions, the office of Ombudsman like Lokpal and Lokayukta come into the limelight which has been established to restrict administrative abuse and ensure fairness in the exercising of such powers[5]. Hence, this article aims to determine what steps must be taken to control such administrative bodies and the changes that must be brought into the existing legal and constitutional guarantees.

IV. NATURE OF BUREAUCRATIC MORALITY OBSERVED IN INDIA

Most often, the moral aspect is tainted with the nature of political, administrative, and judicial corruption in India that has regressively affected the performance standard within the bureaucratic system. In 300 BC, Kautilya beautifully described the issue of "bureaucratic corruption", which is considered institutionalized in the roots of Indian democracy[6]. Even after so many years, administrative malpractice persists in several arenas of governance. In fact, Prime Minster Nehru, in the year 1962, established the Santhanam Committee of Inquiry that had discovered several cases of corruption

[4] L. Michael Hager, *Bureaucratic Corruption in India: Legal Control of Maladministration*, 6 COMP. POL. Stud. 197 (1973).
[5] A.T.M. Obaidullah, *Democracy and Good Governance: Role of Ombudsman*, Bangladesh Institute of Parliamentary Studies, Dhaka, 1st ed., 2001.
[6] O.P. Dwivedi & R.B. Jain, *Bureaucratic Morality in India*, International Political Science Review / Revue Internationale de Science Politique, vol. 9, no. 3, 1988.

throughout the "political and administrative diaspora of India", even affecting the junior levels of the judiciary[7].

Prominent philosophers have commonly defined ethics as the '*standards that are set by human beings to determine what action ought to be right or wrong*'. Public service is a blend of ethical behaviour that involves moral qualities and attitudes. Even though India initially inherited an optimal administrative structure compared to all the emerging countries with its morally upstanding and committed public service, reports of unethical activity by a public official have been making headlines for several decades. This could be linked to the fact that the public hold high regard for bureaucratic morality and expect the administration to be at par with the clergy system in Britain[8].

The general public believes that the primary duty of those who work for the country is *to honour the commitment to serve the country*. However, there exists a dichotomy between the conventional public expectation of individuals who serve the nation and public officials who believe that their role is to perform those duties which are part of their job description and are legally responsible, but not necessarily morally. This has resulted in an *ethical conflict* to determine right or wrong and has devolved into various ethical problems that the governments are tackling. This, ultimately, has led to one crucial question: ' What are the means by which moral consciousness can be raised amongst public officials and persuade them to behave morally while discharging their duties to serve the nation'?

V. SCOPE AND IMPACT OF THE EMERGENT BUREAUCRATIC CORRUPTION ON THE MORALITY OF INDIA

Corruption is commonly defined as a misuse of governmental powers by public officials by doing an act for their benefit or gain. In India, governmental corruption has reached alarming proportions. It has spread not just to virtually every component

[7] L. Michael Hager, *Bureaucratic Corruption in India: Legal Control of Maladministration*, 6 COMP. POL. Stud. 197 (1973).
[8] O.P. Dwivedi, *Bureaucratic Morality, Corruption and Accountability. In: Development Administration*, International Political Science Review / Revue Internationale de Science Politique, vol. 9, no. 3, 1988.

of the governmental infrastructure but also to lawmakers and public officials at all state and federal government levels. The causes of corruption are observed to be varied and challenging to trace, due to which governments are put in a vulnerable position wherein they must directly deal with its effects. As a matter of fact, the most predominant form of corruption in India is bureaucratic corruption which has crept into every level of administration. While some form of corruption goes beyond a single administrator, others require the participation of outsiders. Embezzlement can illustrate the former, whereas bribery is an example of the latter. In certain circumstances, such as nepotism or a conflict of interest, the job candidate or competing businessman will most likely suffer harm[9].

Bureaucratic corruption is observed to have assumed primarily two dimensions which could be categorized as follows:

5.1. A pattern of traditional loyalties:

Even though bureaucrats are mainly recruited based on components like merit and competition, *they often tend to maintain their traditional ties*. In fact, as pointed out by Fred W. Riggs, if a civil servant is given a choice between loyalty and competence, he would choose traditional loyalty. An administrative structure impacted by such traditional loyalties would favour ascriptive rather than achievement-oriented recruiting patterns. As a result, a person who seeks favours from authorities of his caste does not regard his conduct as immoral. Likewise, when a public officer "fixes" applications and permits based on family and caste connections rather than merit, "he is obeying a code of social behaviour that has been in practice since time immemorial." The irony in such instances is that while public officeholders' behaviour has remained apparently above board in many cases, their children or next of kin have gained enormous riches, clout, and position through undue influence. When confronted by the press or the opposition, politicians and bureaucrats have invariably defended their relatives and proteges, professed obliviousness of any corruption

[9] Gangotri Chakraborty, *Legal Framework for Prevention of Corruption in India: An Overview*, 4 INDIAN J.L. & Just. 12 (2013).

claims on their behalf, or stood to their public defence[10]. Therefore, *Nepotism and Bribery are observed to have assumed a form of obligation that needs to be fulfilled*.

5.2. ***Administration as an esoteric process:***

The Indian bureaucracy's urge to rigidly adhere to the procedure has resulted towards being susceptible to human pressure and meddling. While a bureaucrat may appear to be preoccupied with correctness and legality, he may be engaging in several irregularities and wrongdoings. Similarly, his seeming pursuit of universal implementation of complete justice may have apparent flaws. For instance, the institution of Indian Civil Service is associated with excessive pride and ignorance of individual feelings or convenience. They are preoccupied with the stubborn and binding power of departmental choices, norms, arrangements, or protocols, regardless of how poorly or unjustly they operate in particular circumstances. One of the most objectionable aspects of Indian bureaucracy is that *administration is considered an esoteric procedure*. There is little understanding of the citizen's point of view, and public relations exercises are more concerned with *publicity and propaganda* than creating relationships with society or making meaningful efforts to include the public.

Bureaucratic corruption in India is seen to be deep-rooted and spreading unchecked and unhindered and has caused havoc in the nation. It is observed that corrupt politicians cannot adversely impact the administration of the country when there exist honest bureaucrats. However, corruption in the bureaucracy can have a more significant impact on the body politic of India as bureaucrats are more involved in the running of the system[11]. Several political scientists have conducted *cost-benefit analyses* on corruption. Some have argued that bureaucratic corruption may benefit *economic and political growth* by encouraging private business, breaking through community and caste boundaries, and assisting in hiring capable bureaucrats. Others have referred to the negative impact of foreign aid as the cause. Some believe that corruption's role in

[10] *Supra* Note 5.
[11] S.R. Subaashini & D. Vezhaventhan, *A Study on Bureaucratic Corruption in India*, 120 Int J Pure Appl Math, 2018.

political instability and as a threat to ethical principles supersedes cost-benefit analysis.

VI. BUREAUCRATIC CORRUPTION IN OTHER DEVELOPING COUNTRIES

Most often, bureaucratic corruption in developing nations has been strongly associated as an aftereffect of the colonial legacy that had prevailed for centuries which is a logical evolution of Western norms and behaviours. However, two sets of standards distinguished the European masters and the natives wherein corruption was abhorred if the former committed but considered as a way of life in the case of the latter[12].

This influence can be seen in certain Southeast Asian Countries; for instance, the history of corruption in ***Indonesia*** can be seen to be traced to the time of the Dutch period of colonialism, where bribery and corruption was the source of living for the Dutch East India Company personnel due to their low salaries. However, the period after Independence witnessed not only a growth of the government's involvement in society but also a rapid increase in corruption cases among civil servants. Similarly, the seeds of corruption were sown in the case of the ***Philippines*** during the Spanish Colonial Period.

In countries like ***Malaysia*** and ***Singapore***, on the other hand, corruption was made an offence for the first time in the year 1871, for which a commission was appointed to "enquire into matters affecting the integrity of the public services",[13] which revealed that corruption was not extensive amongst the public servants and was scarcely spread across specific departments. In ***Thailand,*** the beginnings of bureaucratic corruption can be linked back to the sixteenth-century corrupt officials and bureaucrats.

Africa is yet another country where corruption is deep-rooted and spreading unchecked and unhindered and has caused havoc in the nation. Bureaucrats try to raise their pay by "lobbying lawmakers and politicians and participating in other

[12] O.P. Dwivedi, *Bureaucratic Corruption in Developing Countries*, Asian Survey, vol. 7, no. 4, 1967.
[13] Federation of Malaya, *Report of a Commission of Enquiry into the Integrity of the Public Services*, Kuala Lumpur, p. 63, 1955.

activities to influence the political system and maximize their advantages"[14]. All these countries have enacted various legislations, adopted anti-corruption measures, and established special commissions of inquiry or special prosecutors to tackle the grave problem of corruption. However, one common issue with these measures is the inadequacy of the implementation process and the ineffectiveness of these agencies.

The Indian scenario is also more or less like these developing nations when it comes to tackling the culture of administrative malpractices and bureaucratic corruption. The Indian constitution has provided various guarantees to government servants and bureaucrats; however, these safeguards have opened the doors to protracted legal actions where these officers have been held guilty of unethical and corrupt practices. In fact, Justice Deepak Misra, in the case ***Manoj Narula v. Union of India,*** stated that "A democratic polity, as understood in its quintessential purity, is conceptually abhorrent to corruption and, especially corruption at high places, and repulsive to the idea of criminalization of politics as it corrodes the legitimacy of the collective ethos, frustrates the hopes and aspirations of the citizens and has the potentiality to obstruct, if not derail, the rule of law."[15] At the same time, in another landmark judgement, the Supreme Court made attempts and moved to "unshackle the bureaucracy from the control of the politicians in their political environment.[16]

Article 311(2)[17] of the Constitution is one such provision that has been scrutinized by the *Santhanam Committee on Prevention of Corruption* and has made certain amendments. India has various legislations like "The Prevention of Corruption Act 1988, The Prevention of Money Laundering Act 2002, and the Right to Information Act 2005" and agencies like the "Central Vigilance Commission and the Central Bureau of Investigation". The Indian government also adopted the concept of institutions like the Ombudsman and has implemented these administrative authorities in India in the form of *Lokpal and Lokayukta*, which acts as '*watchdogs of corruption*'. However, it can be

[14] John Mukum Mbaku, *Bureaucratic Corruption in Africa: The Fultility of Cleanups*, 16 CATO J. 99 (1996).
[15] Manoj Narula v. Union of India, (2014) 9 SCC 1.
[16] T.S.R. Subramanian v. Union of India, (2013) 15 SCC 732.
[17] INDIA CONST, 1950, art. 311(2).

concluded that without effective reforms in the socio-political rules and regulations, opportunism and corruption will continue unabated.

VII. CONCLUSION AND SUGGESTIONS

In cognizance of the above research article, it can be concluded that there is not a single solution that could be considered ideal for preventing such bureaucratic malpractices from happening, which is against the bureaucratic morality of the nation. According to Arthasastra, Kautilya believed the death penalty to be the ideal punishment for those responsible for committing such malpractices[18]. While this form of punishment is not acceptable in today's world scenario, stringent means that bring out the fear of punishment on the person guilty can be a plausible method of deterring punishment. Bureaucratic malpractices like corruption, as seen in the above article, is a problem not just dealt with by India but spread across the world like an infectious disease that has no cure. This has resulted in an ethical conflict to determine right or wrong and has devolved into various ethical problems.

One question that is often asked is how moral consciousness can be raised amongst public officials and persuade them to behave morally while discharging their duties to serve the interest of the nation.

- One means of achieving greater standards of ethics in serving the public is to ensure the non-interference of politicians in the day-to-day administration of Indian governance.
- If the nation's leaders want a clean, efficient, and responsible government, they also make it evident that divergence from recognized rules will be severely punished. If not, dishonest officials would continue to disregard laws and regulations designed explicitly to limit unethical behaviour.
- The legal and constitutional guarantees established to prevent public officials from taking arbitrary actions and unjust bureaucratic decisions are today seen as a

[18] Kautilya, Arthasastra, Book II, Ch. VIII:66.

"guardian" of such corrupt malpractices. Hence, it is high time that these provisions are subjected to stringent implementation to deter corruption.

- Furthermore, methods must be developed to instil in Indians a feeling of social conscience that extends beyond simply condemning bureaucratic corruption to encompass genuine condemnation of offenders and even social isolation.

VIII. REFERENCES

- Kautilya, Arthasastra, Book II, Ch. IX:70.
- India, Report of the Committee on Prevention of Corruption, Santhanam Committee, 1964.
- L. Michael Hager, Bureaucratic Corruption in India: Legal Control of Maladministration, 6 COMP. POL. Stud. 197 (1973).
- O.P. Dwivedi & R.B. Jain, Bureaucratic Morality in India, International Political Science Review / Revue Internationale de Science Politique, vol. 9, no. 3, 1988.
- O.P. Dwivedi, Bureaucratic Corruption in Developing Countries, Asian Survey, vol. 7, no. 4, 1967.
- Jon S. T. Quah, Bureaucratic Corruption in the ASEAN Countries: A Comparative Analysis of Their Anti-Corruption Strategies, 13 Journal of Southeast Asian Studies 153–177, 1982.
- Gangotri Chakraborty, Legal Framework for Prevention of Corruption in India: An Overview, 4 INDIAN J.L. & Just. 12 (2013).
- S.R. Subaashini & D. Vezhaventhan, A Study on Bureaucratic Corruption in India, 120 Int J Pure Appl Math, 2018.
- Federation of Malaya, Report of a Commission of Enquiry into the Integrity of the Public Services, Kuala Lumpur, p. 63, 1955.
- John Mukum Mbaku, Bureaucratic Corruption in Africa: The Futility of Cleanups, 16 CATO J. 99 (1996).

---------- ●●●● ----------